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DECISION



J. McTall
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: 191376

DATE: May 30, 1978

MATTER OF: Francisco Schulthess

DIGEST: A claim for the difference in compensation between that paid to an alien employee of the United States who was a United States citizen although he was unaware of this fact and that which would have been paid to a United States citizen for the period May 1, 1934, to April 29, 1968, is time barred from consideration by 31 U.S.C. 71a (Supp. IV, 1974), since it was received in this Office on September 21, 1976, more than 6 years from the date the claim accrued.

This is in response to an appeal by Mr. Francisco Schulthess from an action taken by our Claims Division on his claim for compensation. He was informed by letter dated February 22, 1977, that his claim was time barred from consideration, since his claim accrued more than 6 years prior to the date it was received in this Office.

Mr. Schulthess states that he is a retired employee of the United States Department of State. His employment consisted of a period from May 1, 1934, to June 30, 1939, with U.S. Department of Commerce and a period from July 1, 1939, to April 29, 1968, with the Department of State. During his 34 years of Federal employment, he was employed at Manila, Philippines, and classified as an alien employee and paid accordingly.

On April 8, 1976, Mr. Schulthess states that he received a United States Certificate of Citizenship from the U.S. Immigration and Naturalization Service. Apparently, Mr. Schulthess claimed United States citizenship on the basis of his father's citizenship. The Certificate of Citizenship issued to him states that he became a citizen of the United States at the time of his birth, August 26, 1914.

Mr. Schulthess by letter dated September 17, 1976, submitted a claim against the United States for the difference in the amount of compensation he received as an alien employee and that which he would have received as a United States citizen.

B-191376

By letter dated February 22, 1977, Mr. Schulthess' claim was returned to him by the Claims Division of this Office and he was advised that his claim was barred, since it had not been received in this Office within 6 years from the date it first accrued.

The pertinent provisions of the act of October 9, 1940, 54 Stat. 1061, as amended by Title VIII of Public Law 93-604, approved January 2, 1975, 88 Stat. 1959, 1965, 51 U.S.C. 71a (Supp. IV, 1974) are as follows:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claims * * * shall be received in said office within 6 years after the date such claim first accrued * * *." (Emphasis supplied.)

Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must be "received in said office" within the 6-year period. The primary purpose of the barring act is to relieve the Government of the necessity of retaining and going back over old records for the purpose of settling stale claims. This Office does not have authority to waive any of the provisions of the act or make any exceptions to the time limitations it imposes.

While it is unfortunate that Mr. Schulthess was unaware that he was a United States citizen by birth, the fact remains that his claim began to accrue at the time he was employed by the United States Government and continued during his employment until his retirement in 1968. Since his claim was received in this Office on September 20, 1976, more than 6 years from his latest employment with Government, it is barred by the above-cited act and no part of his claim arising from his employment may be considered by this Office.

Furthermore, aside from the fact that Mr. Schulthess' claim is barred, it is doubtful that he would prevail on the merits of his case. In cases of similar circumstances, the Civil Service Commission and this Office have concluded that the obtaining of

B-191376

a position by any statements as to noncitizenship on the part of the appointee--when the agency might not have employed the appointee--should bar the appointee from claiming compensation above the rate paid by the agency in good faith. See B-165552, November 12, 1970, and B-167510, August 21, 1969.

Accordingly, Mr. Schulthess' claim may not be considered by this Office and the action of our Claims Division is sustained.

Deputy

P. K. 11m
Comptroller General
of the United States